

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6460 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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VANITABEN PRATAPCHANDRA PAREKH

Versus

DY SECRETARY (APPEALS)

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Appearance:

MR KM SHETH for Petitioners  
MS. HARSHA DEVANI, AGP, for Respondent No. 1  
NOTICE SERVED for Respondent No. 2  
MR JOY MATHEW for Respondent No. 3/1 to 3/6

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 04/10/1999

#### ORAL JUDGEMENT

This petition can be finally disposed of at the admission stage. Learned counsel for the petitioner, learned counsel for the respondent Nos. 3/1 to 3/6 and learned A.G.P. for respondent No. 1 have been heard. None appears for the respondent No. 2 despite sufficient sufficient service of notice of this writ petition.

The prayer of the petitioner in this writ petition is for quashing the impugned order dated 17.4.1999 passed by the respondent No. 1 so also the order dated 15.12.1984 passed by the respondent No. 2 cancelling N.A. permission to the petitioner for using his land for non-agricultural purpose.

It appears from the order dated 15.12.1984 annexure-A that because there was violation of certain conditions granting N.A. permission to the petitioner and further because the petitioner did not appear in response to the show cause notice that N.A. permission was cancelled by the Taluka Development Officer. The matter was taken up in revision under Section 211 of the Bombay Land Revenue Code. The revision preferred by the petitioner was dismissed, hence this writ petition.

It appears from the impugned orders that violation of condition Nos. 10 and 17 was alleged and upheld by the authorities against the petitioner. Condition No. 10 related to the period of commencement of construction and period of completion of construction whereas condition No. 17 relates to time limit for paying premium. It has been observed by the authorities that since construction was not commenced within six months, there was violation of condition No. 10. The revisional authority further found that since the amount of Rs. 64,439/- was not deposited within the prescribed time, N.A. permission was rightly cancelled.

The learned counsel for the petitioner contends that no adequate opportunity of hearing was given to the petitioner and that from the impugned order annexure-B it is clear that the petitioner sent an application by registered A.D. post on 22.10.1984 seeking time to file reply but no time was granted hence an opportunity of hearing is required to be given. It was also contended that casual finding regarding non-payment of premium within fixed time has been recorded. Likewise casual finding has been recorded that construction has not been commenced within six months. The learned counsel for the petitioner contends that construction upto plinth level was already raised within a period of six months. Condition No. 10 provides that "the land holder shall start construction within six months from the date of receipt of N.A. permission and if such construction is not started within the said period or no application for extension of time is made, the said period of six months will be over and N.A. permission is liable to be cancelled. Moreover, the construction should be completed within three years from the date of receipt of

the N.A. permission. N.A. permission is liable to be cancelled if there is any default on the part of the land holder."

Thus, from condition No. 10, two things emerge. The first thing is that the construction must commence within a period of six months from the date of receipt of N.A. permission and if the commencement of construction is held up beyond six months then the petitioner should have applied for extension of time. The second thing flowing from condition No. 10 is that the construction must be completed within three years from the date of receipt of N.A. permission. It is contended by the learned counsel for the petitioner that till date construction has not been completed. So this portion of the condition could not be observed. However, he contends that construction was commenced within a period of six months and further construction could not be raised for the reasons enumerated in application dated 22.10.1984. That application did not receive consideration of the revisional authority. Likewise the revisional authority seems to have overlooked the fact that the total amount was Rs. 65,975/-, out of which Rs. 1536/- were deposited by the petitioner earlier and a sum of Rs. 32,220/- was deposited on 20.1.1983. Further contention has been that actually the petitioner was required to deposit Rs. 32,220/- only as premium and not Rs. 64,439/- as observed by the revisional authority. This question of fact cannot be decided in this writ petition. It is therefore, just and expedient to direct the Taluka Development Officer, Ankleshwar, to decide afresh the violation of condition Nos. 10 and 17 granting N.A. permission in accordance with law after affording an opportunity of hearing to the petitioner. The Taluka Development Officer shall decide whether portion of the construction commenced within a period of six months and whether for extension any application was required and what is the effect of non-completion of construction till today. He shall also decide whether the petitioner was required to deposit Rs. 32,220/- only or a sum of Rs. 64,439/- as observed by the revisional authority and thereafter order shall be passed in accordance with law.

In view of the aforesaid discussion, the petition succeeds and is allowed. The impugned orders dated 15.12.1984 and 17.4.1999 are quashed and set aside. The matter is remanded to the Taluka Development Officer for fresh consideration and passing orders in accordance with law keeping in view the observations made in the foregoing portion of this judgement. No order as to

costs.  
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